

Message Text

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TO SECSTATE WASHDC 2649

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FOR KELLOGG AND SCHWEBEL

E.O. 11652: N/A

TAGS: SREF

SUBJECT: TERRITORIAL ASYLUM-MAY 5

1. DURING TENTH MEETING COMMITTEE ADOPTED BY CONSENSUS
PARAGRAPHS 1, 3 AND 4 OF PREAMBLE. DISCUSSION MARKED
BY REPEATED EFFORTS OF USSR TO DIVERT COMMITTEE INTO
DISCUSSION OF RED HERRINGS. USSR INTERVENED NINE TIMES
DURING DISCUSSION OF FIRST FOUR PARAGRAPHS.

2. COMMITTEE ADOPTED FIRST PARAGRAPH OF PREAMBLE
AS IT APPEARS IN DRAFT CONVENTION, WITH SUBSTITUTION OF
"HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS" FOR "HUMAN
RIGHTS AND FREEDOM".

3. CONSENSUS APPEARED AVAILABLE ON PARAGRAPH 2, WHICH
IS SAME AS IN DRAFT CONVENTION EXCEPT FOR SUBSTITUTION
OF "HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS" FOR "FUND-
AMENTAL HUMAN RIGHTS". USSR QUESTION AS TO WHICH SOLEMN
DECLARATION WAS REFERRED TO CAUSED SECRETARIAT TO BEGIN
RUMAGING THROUGH THEIR NOTEBOOKS AND BRIEFCASES. US
SUGGESTED THEY OBTAIN A COPY OF THE FRIENDLY
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RELATIONS DECLARATION, AND FURTHER CONSIDERATION OF

PARAGRAPH 2 WAS SUSPENDED PENDING COMPLETION OF SECRETARIAT'S EFFORTS.

4. PARAGRAPH 3 HAD BEEN AMENDED DURING FIRST READING TO FOLLOWING: "MINDFUL OF UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN PARTICULAR OF ARTICLES 13 AND 14 OF THAT DECLARATION AND OF INTERNATIONAL CONVENTION CIVIL AND POLITICAL RIGHTS AND IN PARTICULAR ARTICLES 12 AND 13 OF THAT COVENANT." ITALIAN EFFORT TO ADD PROVISION THAT ASYLUM IS THE CONCERN OF THE INTERNATIONAL COMMUNITY, OBVIOUSLY DIRECTED TOWARD FIRING UP ARTICLE 5, DREW SOME SUPPORT, WAS VIGOROUSLY ATTACKED BY USSR, AND POSTPONED FOR LATER CONSIDERATION. PARAGRAPH 3, AS DRAFTED, ADOPTED BY CONSENSUS.

5. PARAGRAPH 4 ADOPTED BY CONSENSUS.

6. PROPOSAL TO DELETE REFERENCE TO NON-REFOULMENT AND VOLUNTARY NATURE OF REPATRIATION IN PARAGRAPH FIVE ON GROUNDS IT PREJUDGED SUBSTANTIVE CONTENT OF CONVENTION MADE BY USSR AND SUPPORTED BY BRAZIL. OTHERS POINTED OUT THAT REFERENCE WAS DESCRIPTION OF PROVISIONS OF EXISTING INSTRUMENTS. MAJORITY, HOWEVER, PLAINLY FAVORED RETENTION OF EXISTING TEXT. STATEMENT BY ZAIRE EXPERT THAT HE WAS WITHDRAWING HIS AMENDMENT TO PARAGRAPH AS DRAFTED PROMPTED RESPONSE FROM USSR THAT COMMITTEE WAS NOT PROPOSING ANY PROVISIONS SO THAT NO WITHDRAWAL WAS APPROPRIATE. THIS REOPENED PROTRACTED AND SOMETIMES SHARP DEBATE ON THE FUNCTION OF THE COMMITTEE WHICH ORIGINALLY OCCURRED AT FOURTH MEETING. CHAIR INDICATED HIS INTENTION THAT DURING SECOND READING HE WOULD SEEK FORMULATION OF SPECIFIC PROPOSALS RATHER THAN MERELY A COMMENTARY ON EXISTING DRAFT CONVENTION. IN THIS HE WAS STRONGLY SUPPORTED BY UK, URUGUAY, US, BRAZIL, AND MALI AND AUSTRALIA. OPPOSED BY USSR AND IRAN.

7. AT ELEVENTH MEETING CHAIRMAN, FORTIFIED BY SUPPORT HE HAD RECEIVED AT MORNING MEETING, FIRMLY RULED THAT UNCLASSIFIED

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PARAGRAPH 5 OF PREAMBLE WAS ADOPTED BECAUSE MAJORITY FAVORED IT. THIS WAS FIRST DEPARTURE FROM CONSENSUS PROCEDURE IN OPERATION OF COMMITTEE.

PARAGRAPH 6 OF PREAMBLE IS CHANGED DURING FIRST READING TO REPLACE "BASED ON THESE PRINCIPLES" IN DRAFT CONVENTION WITH "ON TERRITORIAL ASYLUM", RULED ADOPTED BY CHAIRMAN ON BASIS OF MAJORITY VIEW OF

COMMITTEE. EFFORT TO INCORPORATE ARTICLE 8 OF DRAFT CONVENTION INTO THIS PARAGRAPH OF PREAMBLE WAS SUCCESSFULLY RESISTED BY US, AUSTRALIA, BELGIUM AND FRANCE. PROPOSAL WAS SUPPORTED BY IRAQ, USSR, INDIA AND UKRAINE.

9. COMMITTEE RETURNED TO PARAGRAPH 2. HEARD FROM SECRETARIAT THAT REFERENCE TO "SOLEMN DECLARATION" WAS DERIVED FROM ARTICLE 55 (C) OF UN CHARTER, DECLARATION ON FRIENDLY RELATIONS, AND DECLARATION ON TERRITORIAL ASYLUM. AS TO SOLEMNITY, SECRETARIAT (DADZIE) ASSURED COMMITTEE THAT EVERY GA RESOLUTION IS A SOLEMN ONE. CHAIR RULED PARAGRAPH 2 ADOPTED BECAUSE MAJORITY OF COMMITTEE FAVORED IT.

10. PROPOSAL OF AUSTRALIA FOR NEW PREAMBULAR PARAGRAPH: "BEARING IN MIND THE OTHER INSTRUMENTS DEALING WITH ASYLUM AND THE STATUS OF REFUGEES," RULED ADOPTED BY CHAIRMAN BECAUSE MAJORITY DID NOT OPPOSE IT (SIC). PLACED BETWEEN PARAGRAPHS 4 AND 5.

11. BRAZILIAN PROPOSAL FOR NEW PREAMBULAR PARAGRAPH: "MINDFUL OF THE PRINCIPLES OF INTERNATIONAL LAW EMBODIED IN CHARTER OF UN AND IN PARTICULAR THE PRINCIPLE OF UNIVERSAL RESPECT FOR AND OBSERVANCE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS FOR ALL," RULED ADOPTED BY CHAIRMAN ON GROUNDS THAT MAJORITY DID NOT OBJECT. ONLY SPEAKER WAS USSR, WHO HAD OBJECTED.

12. ITALIAN PROPOSAL FOR NEW PREAMBULAR PARAGRAPH: "CONSCIOUS THAT ASYLUM IS THE CONCERN OF THE INTERNATIONAL COMMUNITY", WHICH HAD BEEN SUPPORTED BY US AND OTHERS, WAS ADOPTED AND PLACED AS NEW PARAGRAPH FOLLOWING PARAGRAPH 3.
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13. SUBSTANCE OF CONVENTION. CHAIR INDICATED THAT FIRST QUESTION WAS WHETHER ARTICLE 1 OF DRAFT CONVENTION OR ARTICLES 1 AND 2 OF US PROPOSAL WAS TO BE BASIS OF COMMITTEE'S WORK. ITALY, BELGIUM, UK, US, FRANCE, AND BRAZIL FAVORED US PROPOSAL; IRAN, MEXICO, INDIA AND USSR FAVORED DRAFT CONVENTION. CHAIR PUT ISSUE TO VOTE. COMMITTEE DECIDED TO USE US PROPOSAL AS BASIS OF COMMITTEES' WORK BY VOTE OF 9(US)-7-1(UK). THIS WAS FIRST VOTE OF COMMITTEE.

14. CHAIR THEN REFERRED TO BRAZILIAN PROPOSAL THAT SEQUENCE OF ARTICLES IN US PROPOSAL BE REVERSED. COMMITTEE DECIDED BY VOTE OF 7-5-(US)-3 TO REVERSE SEQUENCE OF ARTICLES IN US PROPOSAL.

15. IN FURTHER REPORTING US DELEGATION WILL USE FOLLOWING NUMBERING SYSTEM, WHICH CORRESPONDS TO PROCEDURAL DECISIONS TAKEN BY COMMITTEE: ARTICLE 1 IS ORIGINAL ARTICLE 2 OF US PROPOSAL. ARTICLE 2 IS ORIGINAL ARTICLE 1 OF US PROPOSAL. ARTICLE 3 IS ARTICLE 2 OF DRAFT CONVENTION, ETC.

16. AFTER SERIES OF DRAFTING AMENDMENTS DURING CONSIDERATION BY COMMITTEE, ARTICLE 1 PARAGRAPH 1 ADOPTED BY MAJORITY AS FOLLOWS: "EACH CONTRACTING STATE, ACTING IN THE EXERCISE OF ITS SOVEREIGN RIGHTS, SHALL USE ITS BEST ENDEAVORS, IN A HUMANITARIAN SPIRIT, TO GRANT ASYLUM IN ITS TERRITORY TO ANY PERSON ELIGIBLE FOR THE BENEFITS OF THIS CONVENTION."

17. COMMENT: COMMITTEE USED TWO MEETINGS TO REACH DECISIONS ON RELATIVELY NON-CONTROVERSIAL PREAMBLE AND ON ARTICLE 1 PARAGRAPH 1. CHAIRMAN, BUOYED BY CONSIDERABLE SUPPORT WITHIN COMMITTEE FOR HIS PROCEDURE ON SECOND READING, AND ASSISTED BY THE EVIDENT FACT THAT USSR IS TRYING TO THWART EFFORTS TO REACH A CONSTRUCTIVE OUTCOME, IS GENIALLY RULING QUITE FIRMLY. THIS IS REASSURING, BUT IT IS LATE.ABRAMS

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